

ESTTA Tracking number: **ESTTA286210**

Filing date: **05/27/2009**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

Opposer Information

Name	Guthy-Renker LLC
Granted to Date of previous extension	05/27/2009
Address	41-550 Eclectic Street, Suite 200 Palm Desert, CA 92260 UNITED STATES
Attorney information	Daniel M. Cislo Cislo & Thomas LLP 1333 2nd Street, Suite 500 Santa Monica, CA 90401 UNITED STATES dan@cislo.com, ttab@cislo.com, dlanson@cislo.com, michael@cislo.com

Applicant Information

Application No	77566970	Publication date	01/27/2009
Opposition Filing Date	05/27/2009	Opposition Period Ends	05/27/2009
Applicant	Flageoli, Ltd. 7310 Smoke Ranch Rd. - Ste. "I" Las Vegas, NV 89128 UNITED STATES		

Goods/Services Affected by Opposition

Class 005. All goods and services in the class are opposed, namely: Medicated skin care preparations

Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
Dilution	Trademark Act section 43(c)

Marks Cited by Opposer as Basis for Opposition

U.S. Application/Registration No.	NONE	Application Date	NONE
Registration Date	NONE		
Word Mark	PROACTIV		
Goods/Services	For a variety of goods and services, including, but not limited to, acne treatment preparations and related cosmetic products.		

U.S. Application/ Registration No.	NONE	Application Date	NONE
Registration Date	NONE		
Word Mark	PROACTIV SOLUTION		
Goods/Services	For a variety of goods and services, including, but not limited to, acne treatment preparations and related cosmetic products.		

Attachments	Notice of Opposition.pdf (6 pages)(656329 bytes)
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/Daniel M. Cislo/
Name	Daniel M. Cislo
Date	05/27/2009

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

**IN THE MATTER OF APPLICATION SERIAL NOS. 77/566,970
PUBLISHED IN THE OFFICIAL GAZETTE ON JANUARY 27, 2009**

GUTHY-RENKER LLC, a Delaware limited liability company,)	OPPOSITION NO. _____
)	
)	
OPPOSER,)	
vs.)	NOTICE OF OPPOSITION
)	
FLAGEOLI, LTD, a Nevada limited liability company,)	
)	
)	
APPLICANT.)	
)	

Opposer, GUTHY-RENKER LLC, a Delaware limited liability company, having offices at 41-550 Eclectic Street, Suite 200, Palm Desert, California 92260 (“Guthy-Renker”), believes that it will be damaged by registration of the mark shown in Application Serial No. 77/566,970 by Flageoli, Ltd., having a listed business address of 7310 Smoke Ranch Rd., Suite “I,” Las Vegas, Nevada 89128, and hereby opposes the same and requests that the registration to the application be refused.

The grounds for opposition are as follows:

1. Applicant seeks to register a mark which consists essentially of the term “PROREMEDY” for use in connection with medicated skin care preparations in International Class 005 (hereinafter “Applicant’s Mark”). Applicant’s Mark is an intent-to-use base application under 15 U.S.C. §1051(1)(b).

2. Opposer has obtained the necessary extensions of time in which to file this Notice of Opposition.

3. Since as early as 1991, Opposer, its predecessors, or its related companies have continuously used the terms “PROACTIV” and “PROACTIV SOLUTION” (“Opposer’s Marks”) in interstate commerce as trademarks for a variety of goods and services, including, but not limited to, acne treatment preparations and related cosmetic products (“Opposer’s Goods”). Opposer’s Marks have also continuously appeared in substantial advertising and promotion of Opposer’s skin care and cosmetic products, such that the marks are closely identified with Opposer’s Goods and have gained very valuable public recognition. Opposer has established an outstanding reputation as to the quality of its products sold under the “PROACTIV” and “PROACTIV SOLUTION” marks.

4. Opposer has continuously used its Marks in interstate commerce since long prior to any date upon which Applicant can rely. By virtue of its sales of high-quality products bearing Opposer’s Marks in interstate commerce, its expenditures of considerable sums for promotional activities and the excellence of its products, Opposer has developed significant goodwill in its Marks and a valuable reputation.

5. Opposer’s trademark rights for the PROACTIV and PROACTIV SOLUTION Marks have priority over Applicant’s Mark, inasmuch as Opposer has continuously used its Marks since it commenced use of its Marks, and Applicant’s application lists a filing date of September 10, 2008, and is listed as an intent-to-use application.

6. Applicant's Mark so resembles Opposer's Marks that have been and are currently used, as to be likely to cause confusion, or cause mistake, or to deceive, in violation of Section 2(d) of The Trademark Act, 15 U.S.C. §1052(d), when used on or in connection with Applicant's Goods.

7. Under the circumstances, registration of Applicant's Mark will injure Opposer by causing the trade and/or purchasing public to be confused, and/or deceived into believing that Applicant's Goods are those of Opposer, or are sponsored by Opposer, to Opposer's damage and will place a cloud over Opposer's title to its PROACTIV and PROACTIV SOLUTION Marks, in violation of Section 2(d) of the Trademark Act, 15 U.S.C. Section 1052(d).

8. Opposer's PROACTIV and PROACTIV SOLUTION Marks were well established and famous long before the filing date of Applicant's subject applications, and at the time that Applicant filed the subject applications. Registration of Applicant's Mark would diminish and dilute the distinctive quality of Opposer's rights in its famous PROACTIV and PROACTIV SOLUTION Marks in violation of 15 U.S.C. §1125(c). Moreover, registration of Applicant's Mark would diminish the advertising value of Opposer's Marks, and such registration would, in the event of any quality problems involving the goods offered by Applicant, tarnish the distinctiveness of Opposer's Marks.

9. Opposer's Marks are distinctive and famous such that the public would associate Opposer's Marks with Opposer when encountering Opposer's Marks apart from Opposer's Goods.

10. Applicant's Mark is the same as, or substantially the same as Opposer's Marks, including in visual appearance and in pronunciation.

11. Applicant's Mark is likely to and/or have diluted and lessened the capacity of Opposer's Marks to identify and distinguish Opposer's Goods.

12. Applicant's Mark so resemble Opposer's continuously used, famous and well-known Marks as to be likely, when used in connection with the goods as set forth in Applicant's application, to lessen the capacity of Opposer's Marks to identify and distinguish Opposer's Goods.

13. The subject application should be refused because Opposer's rights of continuing its present use of its Marks in commerce are, or would be, threatened by Applicant's registration of Applicant's Mark for Applicant's Goods, and because Opposer's business would otherwise be damaged by Applicant's registration of Applicant's Mark for Applicant's Goods.

14. Applicant does not have a bona fide intention to use the Mark in U.S. commerce.

WHEREFORE, the Opposer prays that Application Serial No. 77/566,970 be rejected, and that the Mark sought for the goods therein to be specified in International Class 005 be denied and refused.

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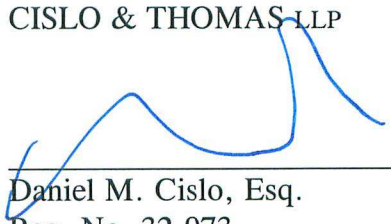
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The required fee for one class of goods, and any additional fees, may be charged to Opposer's representative's deposit account No. 03-2030.

Respectfully submitted,

CISLO & THOMAS LLP

Dated: May 27, 2009



Daniel M. Cislo, Esq.
Reg. No. 32,973

ELECTRONIC MAILING CERTIFICATE

I hereby certify that this paper (along with any paper referred to as being attached or enclosed) is being submitted electronically through the Electronic System for Trademark Trials and Appeal ("ESTTA") on the date shown below.

on 5-29-09
5-27-09
Daniel M. Cislo, Esq. Date

CERTIFICATE OF SERVICE

I hereby certify that one (1) copy of this document is being deposited with the United States Postal Service as First Class Mail, postage affixed, in an envelope addressed to:

Flageoli, Ltd.
7310 Smoke Ranch Rd., Suite "I"
Las Vegas, NV 89128

Dated: 5-27-09 By: Daniel M. Cislo, Esq.

CERTIFICATE OF SERVICE

I hereby certify that one (1) copy of this document is being deposited with the United States Postal Service as First Class Mail, postage affixed, in an envelope addressed to:

Daphne Sheridan Bass, Esq.
Law Offices of Daphne Sheridan Bass
921 26th Street
Santa Monica, CA 90403-2203

Dated: 5-27-09 By: Daniel M. Cislo, Esq.

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